

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

EDWARD SHIA,

Defendant.

Case No. [15-cr-00257-VC-1](#)

**ORDER RE MOTION TO COMPEL
DISCOVERY**

Re: Dkt. No. 19

Shia's motion to compel discovery under Fed. R. Crim. P. 16(a)(1)(E) is construed as a request to issue a third-party subpoena under Fed. R. Crim. P. 17(c) for the Irdeto and CPS software and their source codes. Crim. L.R. 17-2. So construed, the request is granted. The Court finds, at least based on the submissions of the parties so far, that "(1) that the [software and source codes] are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that [Shia] cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general fishing expedition." *United States v. Krane*, 625 F.3d 568, 574 (9th Cir. 2010) (quoting *United States v. Nixon*, 418 U.S. 683, 699-700 (1974)). Although the government correctly argues that discovery of this information is not relevant to Shia's request for a *Franks* hearing, it appears that Shia has made good faith allegations that the Irdeto and CPS software and source codes are evidentiary and relevant to a potential motion to suppress in two possible ways. First, Shia has alleged that either the Irdeto or the CPS software or both accessed private, non-shared folders on Shia's computer, which might constitute a warrantless search in violation of the Fourth Amendment. *See, e.g., United States v. Ganoe*, 538 F.3d 1117, 1127 (9th Cir. 2008) (a person has an objectively reasonable expectation of privacy in his personal computer

1 as a general matter, but a person who uses a file-sharing program does not have a reasonable
2 expectation of privacy as to those files that are placed in shared folders). Second, Shia has alleged
3 that the Irdeto or CPS software or both may be unreliable, such that the search warrant in this case
4 was not supported by probable cause. *Cf. Florida v. Harris*, 133 S. Ct. 1050, 1057 (2013).
5 Although the government contends that the software is reliable and that it does not access private
6 folders, the government has not submitted enough information to allow the Court to accept those
7 contentions. Accordingly, Shia is permitted to issue the Rule 17(c) subpoenas to the appropriate
8 third party or parties to inspect the Irdeto and CPS software and their source codes.

9 **IT IS SO ORDERED.**

10 Dated: December 7, 2015



VINCE CHHABRIA
United States District Judge